

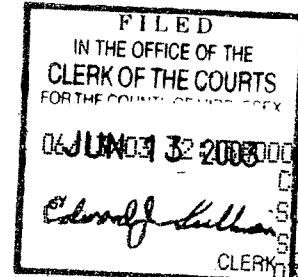
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPT.
CIVIL ACTION NO. XX-XXXX

03-2512

CROWN CASTLE ATLANTIC LLC)
)
 PLAINTIFF)
)
 vs.)
)
 GUY A. MCKAY AND)
 SHERYLL MCKAY)
)
 DEFENDANTS)



COMPLAINT AND DEMAND

INTRODUCTION

1. By this action, the Plaintiff, Crown Castle Atlantic LLC ("Crown") seeks a declaration of the rights of the parties with respect to a Land Lease Agreement ("Lease"), pursuant to Massachusetts General Laws chapter 231A §1 and to specifically enforce the terms of the Lease. Crown seeks declaratory, injunctive and compensatory relief.

Crown's predecessor in interest Cellco Partnership, a Delaware General Partnership d/b/a Bell Atlantic NYNEX Mobile executed the Lease with Lessor Defendants Guy A. McKay and Sheryll McKay ("McKays") for a parcel ("Property") of their land located at 982-988 Main Street, North Acton, Massachusetts, and concomitant access and utility easements thereto, for the purpose of operating a wireless communications tower facility.

Crown has six (6) wireless cellular providers as subtenant/licensees ("Subtenants") located on space on its tower at the Property from which they broadcast and receive wireless communications signals. The Subtenants have requested an upgrade of the landline telephone service to the Property. The Lease provides Crown with the right to upgrade the telephone service at the Property. The upgrade necessitates installation of fiber optic telephone lines ("telephone lines") in an existing conduit under the existing Right-of-Way granted in the Lease running to the Property. The upgrade also necessitates the installation of an approximately five (5') foot by four (4') Cabinet within Crown's leased Property.

The McKays have repeatedly interfered with Crown's efforts to install the telephone line and have refused to fulfill their contractual obligation under the Lease to grant Crown or a public utility the necessary Right-of-Way for the installation and maintenance of underground utility service.

The McKays' breach of their obligations under the Lease to grant Crown or a public utility the necessary Right-of-Way for the installation and maintenance of underground utility service has caused and continues to cause damage to the business relationship with its Subtenants and loss of revenue that could be generated from the installation of additional equipment by its Subtenants.

PARTIES

2. Plaintiff, Crown Castle Atlantic LLC (“Crown”) is a Delaware limited liability company with a mailing address for its Northeast Area office of 46 Broadway, Albany, NY 12204.

3. Defendants Guy A. McKay and Sheryll McKay (“McKays”) are husband and wife with a mailing address of 181 Grant Street, Lexington, Massachusetts 02173. The McKays are owners of the subject property at 982-988 Main Street, North Acton, Massachusetts, also known as “Butter Brook Farm.”

STATEMENT OF FACTS

4. On or about August 12, 1996, the McKays entered into a Land Lease Agreement (“Lease”) (a copy of the Lease is attached as “**Exhibit 1**”) with Plaintiff’s predecessor-in-interest, Cellco Partnership d/b/a Bell Atlantic NYNEX Mobile (“BANM”).

5. The McKays, as Lessors, agreed to lease the Property – a sixty (60) foot by sixty (60) foot parcel of their land at 982-988 Main Street in North Acton, Massachusetts – to Lessee BANM for the purpose of “constructing, maintaining, and operating a communications facility and uses incidental thereto together with one (1) antenna structure and all necessary connecting appurtenances” (see **Exhibit 1**, Numbered Paragraph Seven (7)).

6. The McKays land at 982-988 Main Street in North Acton, Massachusetts is described in a deed recorded with the Middlesex South Registry of Deeds at Book 23165, Page 0158.

7. In the Lease, the McKays granted BANM “the non-exclusive right for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for installation and maintenance of underground utility wires, cables, conduits, and pipes under, or along a fifteen (15’) foot wide right-of-way extending from the nearest public right-of-way, Main Street, to the demised premises,...” (“Right-of-Way”). “In the event any public

utility is unable to use the aforementioned right-of-way, the Lessor hereby agrees to grant a substitute right-of-way either to the Lessee or to the public utility at no cost to the Lessee (see **Exhibit 1**, Numbered Paragraph One (1)).

8. The Lease states that the “installation of all improvements shall be at the discretion and option of the Lessee [BANM]” (see **Exhibit 1**, Numbered Paragraph Seven (7)).

9. The initial term of the Lease was for five (5) years.

10. The initial term of the Lease commenced February 1, 1997.

11. The annual rental amount for the initial five (5) year terms was Thirteen Thousand Two Hundred Dollars (\$13,200.00) (see **Exhibit 1**, Numbered Paragraph Three (3)).

12. BANM commenced construction of the communications tower facility on or about March of 1997.

13. On November 10, 1997, the McKays and BANM executed a First Amendment to the Lease (“First Amendment”) (a copy of the First Amendment is attached as “**Exhibit 2**”).

14. The First Amendment states, “This Agreement shall automatically be extended for five (5) additional five (5) year terms...” (see **Exhibit 2**, Numbered Paragraph One (1)).

15. The first five (5) year extension term commenced on February 1, 2002.

16. The annual rental amount for the first five (5) year extension term is Fifteen Thousand One Hundred Eighty Dollars (\$15,180.00) (see **Exhibit 1**, Numbered Paragraph Five (5)).

17. During construction of the communications tower facility, the McKays requested that the Right-of-Way granted in the Lease running from Main Street to the Property be constructed in a certain location on the Property.

18. During construction of the communications tower facility, the McKays requested that the underground conduit running under the Right-of-Way from Main Street to the Property be installed in a certain location on the Property.

19. BANM contracted with the New England Telephone Company ("NETC") (a landline telephone company), to install the underground conduit running under the Right-of-Way from Main Street to the Property.

20. NETC installed the underground conduit running under the Right-of-Way from Main Street across the Property to the communications tower facility.

21. NETC installed telephone lines in the underground conduit running under the Right-of-Way from Main Street across the Property to the communications tower facility.

22. BANM, by and through its contractor, Mirra Construction of Georgetown, Massachusetts, constructed the Right of Way from Main Street to the Property in the location on the Property requested by the McKays.

23. BANM, by and through its contractor, NETC, installed the underground conduit running under the Right-of-Way from Main Street to the Property in the location on the Property requested by the McKays.

24. NETC requires that before it installs underground conduits under a landowner's property that the landowner execute its standard Easement Agreement ("Easement Agreement") (a copy of the standard Easement Agreement is attached as "**Exhibit 3**").

25. On or about August 14, 1997, BANM became known as Bell Atlantic Mobile ("BAM").

26. BAM entered into a sublease agreement for tower space and ground space within the Property on March 5, 1998 with Omnipoint Communications MB Operations, Inc. ("Omnipoint").

27. BAM entered into a sublease agreement for tower space and ground space within the Property on June 1, 1998 with Nextel Communications of the Mid-Atlantic, Inc. ("Nextel").

28. BAM entered into a sublease agreement for tower space only on July 28, 1998 with AT&T Wireless Services PCS, Inc. ("AT&T").

29. On or about the time BAM and AT&T entered into the sublease agreement for tower space, AT&T entered into a separate agreement with the McKays for ground space outside the Property leased by BAM.

30. BAM entered into a sublease agreement for tower space and ground space within the Property on September 15, 1998 with Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One n/k/a Cingular Wireless ("Cingular").

31. By letter dated January 8, 1999 from Attorney Michael S. Giaimo of Robinson & Cole LLP, legal counsel for Bell Atlantic Mobile ("BAM"), the McKays were notified of BAM's formation of a joint venture with Crown Castle International Corp and the intent to assign its interest in the Lease to the joint venture company, Crown. The McKays were requested to accept, and agree to, the proposed assignment.

32. The McKays consented to the assignment of the Lease to Crown by signing a letter from BAM dated January 8, 1999 (a copy of which is attached hereto as **Exhibit "4"**).

33. On or about March 31, 1999, BAM assigned its interest in the Lease and corresponding subleases to Crown as evidenced by the Memorandum of Assignment (a copy of which is attached hereto as **Exhibit "5"**).

34. Crown entered into a sublease license agreement for tower space and ground space within the Property on January 13, 2000 with Sprint Spectrum, L.P., a Delaware Limited Partnership ("Sprint PCS").

35. On or about February 2000, Crown's Subtenants requested that Crown upgrade the telephone lines to the Property.

36. On or February 2000, Crown contracted Bell Atlantic, ("BA") (the landline telephone company formerly known as NETC), to upgrade the telephone lines at the Property.

37. On or about February 2000, BA informed Crown for reasons unknown to it that its predecessor NETC had not obtained the standard executed Easement Agreement with the McKays before the underground conduit and telephone lines were initially installed.

38. On or about February 2000, BA informed Crown that in order to run the new telephone lines, it would require the McKays to execute the Easement Agreement that NETC did not have the McKays execute before.

39. On or about March 2000, Crown contacted the McKays and informed them that the newest Subtenant on the Tower, Sprint PCS, had also repeated the prior request of Crown's existing Subtenants that Crown upgrade telephone lines at the Property.

40. On or about March 2000 Crown informed the McKays that the Lease permitted Crown to upgrade the telephone lines at the Property and required the McKays to sign the Easement Agreement.

41. On or about March 2000, and in violation of the Lease, the McKays refused, and continue to refuse, to execute BA's Easement Agreement.

42. By letter dated April 3, 2000, James P. Donahue, Vice President/General Manager for Crown's then New England Region ("Donahue"), again informed the McKays that BA required the McKays to execute an Easement Agreement for the installation of fiber optic telephone lines in the existing conduit.

43. On or about June 30, 2000, BA began doing business as Verizon Communications ("Verizon") (the landline telephone company) when Bell Atlantic and GTE completed their merger.

44. In violation of the Lease, the McKays refused, and continue to refuse, to execute the Easement Agreement with Verizon for the installation of fiber optic telephone lines in the existing conduit.

45. By letter dated February 14, 2002, Attorney Earl W. Duval ("Attorney Duval") of Duval, Bellone, Cranford & Celli, P.C., legal counsel for Crown, requested the McKays "adhere to the terms of the Land Lease and execute an Easement with Verizon for the installation of telephone lines"(a copy of the this letter is attached hereto as **Exhibit "6"**).

46. The letter dated February 28, 2002 from Attorney Duval informed the McKays that Verizon is "upgrading the existing telephone lines in the existing conduit."

47. Along with the letter dated February 28, 2002 from Attorney Duval to the McKays, Attorney Duval forwarded a letter dated February 25, 2002 to Attorney Duval from Jeffrey Barbadora ("Barbadora"), Asset/Operations Manager for Crown to the McKays.

48. In the letter dated February 25, 2002 from Barbadora to Attorney Duval, Barbadora explained that Crown "must install" a fiber optic line to "allow carriers to upgrade their communication at the North Acton site."

49. On March 20, 2002, Crown Representatives Jeffrey Barbadora, James Donahue, and Kristian Zoeller, along with Attorney Duval, met with the McKays at the Property.

50. At the March 20, 2002 meeting, the McKays refused to acknowledge the terms and conditions of the Lease and Crown's rights thereunder.

51. By letter dated March 25, 2002, to Attorney Duval, the McKays outlined five (5) questions for Crown.

52. By letter dated April 8, 2002, Attorney Duval responded to the McKays questions in kind, attaching copies of the Lease and Lease Amendment, attached hereto as **Exhibits 1 and 2**, for their review (a copy of this letter is attached hereto as **Exhibit "7"**).

53. By letter dated April 11, 2002 to Attorney Duval, the McKays restated earlier questions regarding the upgrade and raised issues of access to the Property.

54. On July 8, 2002, the McKay's attorney, Francis A. DiLuna ("Attorney DiLuna") sent correspondence to Attorney Duval alleging that the McKay's were entitled to certain revenues from ground space leases from collocators on the communications tower.

55. By letter dated July 12, 2002, Attorney Duval sent a reply to Attorney DiLuna's July 8th correspondence clarifying the nature of the financial arrangements that allows the McKays to receive revenue for ground space from the collocating wireless service providers and suggesting that Attorney Duval and Attorney DiLuna meet to discuss resolution of the easement and access issues (a copy of this letter is attached hereto as **Exhibit "8"**).

56. On November 7, 2002, Attorney Duval sent Attorney DiLuna a revised draft of the proposed Easement that specifically addressed the McKay's concern of the duration of the easement (a copy of this letter and revised draft is attached hereto as **Exhibit "9"**).

57. By letter dated November 15, 2002, Attorney Duval sent a follow up to his November 7th letter and requested a response from Attorney DiLuna.

58. On December 11, 2002, Attorney Duval sent Attorney DiLuna a second follow up to his November 7th correspondence.

59. On February 11, 2003, Attorney DiLuna sent correspondence to Attorney Daniel D. Klasnick, an associate attorney for counsel representing Crown, ("Attorney Klasnick") responding to numerous emails from Attorney Klasnick in which the McKays' requested a conditional meeting with Crown to discuss the easement issue.

60. By letter dated February 28, 2003, Attorney DiLuna informed Attorney Klasnick "...that all communications concerning Butterbrook Farm are to be directed to Guy McKay," effectively providing notice of his withdrawal as counsel for the McKays.

61. As of this filing, despite repeated requests, the McKays have refused to execute an Easement Agreement with Verizon.

62. As of this filing, Verizon has not installed the additional telephone lines to the Property needed by Crown's six (6) Subtenants in order to provide adequate coverage to their many wireless customers in the area who rely upon this service to make not only calls of convenience, but calls requesting emergency services.

STATEMENT OF CLAIMS

COUNT I BREACH OF CONTRACT

63. Crown repeats the allegations contained in Paragraphs 1 through 62 and, by this reference, incorporates them herein.

64. The McKays executed the Lease on August 12, 1996.

65. The McKays executed the Lease in consideration of a one thousand dollar (\$1,000.00) signing fee and monthly lease payments as determined by the Lease.

66. The monthly lease payments, as provided for under the Lease, have been made on time and in full since the first term of the lease.

67. The Lease is a binding agreement between Crown, as a lawful assignee of BANM, and the McKays, who consented to the assignment of the Lease to Crown.

68. In reliance on the terms, conditions and covenants contained in the Lease, BANM, Crown's predecessor in interest, undertook to construct a wireless communications tower, to place related accessory equipment on the Property, and to run communication lines under the Right-of-Way Easement to the Property in a location requested by the McKays.

69. In reliance on the terms, conditions and covenants contained in the Lease, BAM and its successor in interest Crown undertook to contract with six (6) Subtenants for space on its tower from which they broadcast and receive wireless communications signals vital to their customers.

70. Numbered Paragraph One (1) of the Lease (see **Exhibit 1**), expressly permits Crown to install and maintain underground utility lines, such as the proposed fiber optic lines, under the Right-of-Way Easement.

71. Numbered Paragraph One (1) of the Lease (see **Exhibit 1**), expressly requires the McKays to grant such Right-of-Way Easement to Crown or the public utility that is necessary for the installation and maintenance of underground utility wires.

72. Numbered Paragraph Seven (7) of the Lease (see **Exhibit 1**) provides that Crown shall have the right to use the Property for the purpose of constructing, maintaining and operating a Communications Facility and uses incidental thereto together with one tower and all necessary connecting appurtenances.

73. Numbered Paragraph Seven (7) of the Lease (see **Exhibit 1**), permits Crown to make improvements on the Property at its discretion and option.

74. Numbered Paragraph 7 of the Lease (see **Exhibit 1**) provides that Lessor shall take no action, which would adversely affect the status of the Property with respect to the proposed use thereof by Lessee.

75. Numbered Paragraph 13 of the Lease (see **Exhibit 1**) provides that Lessor covenants that upon paying the rents and performing its covenants Lessee shall peaceably and quietly have, hold and enjoy the leased Property.

76. In violation of the express provisions of the Lease, the McKays refuse, after repeated requests, to formally execute an Easement Agreement with the landline telephone company to permit it access and use of the easement granted in the Lease. The McKays have also refused to otherwise perform their obligations under the Lease, so that Crown may maintain and upgrade existing utility lines and install new utility lines in the existing conduit under the Right-of-Way Easement and related improvements on the Property.

77. The McKay's refusal to recognize Crown's rights and to perform their obligations under the Lease constitutes material breaches of the Lease.

78. As a result of the McKay's material breaches of the Lease, Crown has been unable to maintain and upgrade the landline telephone utility service to the Property demanded by its Subtenants and has suffered damages for which the McKays are liable, including but not limited to its reputation and goodwill with its customers.

79. As a result of the McKays' material breaches of Lease, Crown has been unable to provide its Subtenants with maintained and upgraded utility service to allow operation of a wireless communications facility on the Property in the full manner expressly permitted by the Lease including but not limited to, reliable emergency service calls being able to broadcast from and received by the Subtenants communication equipment on the Tower.

80. The breaches of Lease by the McKays are of such a nature that legal remedies of damages and restitution are not wholly adequate, but rather require in addition the imposition of the equitable remedies of specific performance and injunction to require the McKays to perform their duties under the Lease.

COUNT II
INTEFERENCE WITH ADVANTAGEOUS RELATIONS

81. Crown repeats the allegations contained in Paragraphs 1 through 80 and, by this reference, incorporates them herein.

82. Crown has an existing sublease/license agreement for tower space and ground space within the Property with Omnipoint Communications MB Operations, Inc.

83. Crown has an existing sublease/license agreement for tower space and ground space within the Property with Nextel Communications of the Mid-Atlantic, Inc.

84. Crown has an existing sublease agreement license for tower space only with AT&T Wireless Services PCS, Inc.

85. Crown has an existing sublease agreement license for tower space and ground space within the Property with Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One n/k/a Cingular Wireless.

86. Crown has an existing sublease agreement license for tower space and ground space within the Property with Cellco Partnership d/b/a Verizon Wireless.

87. Crown has an existing sublease agreement license for tower space and ground space within the Property with Sprint Spectrum, L.P.

88. Through correspondence and arrangement for the financial benefit of the McKays, the McKays have actual knowledge of the business relationship between Crown and the Subtenants on the Property.

89. Crown, through correspondence and in meetings with the McKays, has informed the McKays that Crown's Subtenants on the tower require to maintain and upgrade the telephone landline service to the Property to allow for the increasing operational coverage, performance and capacity of the communication equipment installed on the Tower including but not limited to reliable emergency service calls being able to be broadcast and received by such equipment on the Tower.

90. The McKays wrongful refusal, after repeated requests, to formally execute an Easement Agreement to document the landline telephone company's use of the easement granted in the Lease on behalf of Crown and to otherwise perform their obligations under the Lease, has resulted in the intentional interference with Crown's business relationship with the Subtenants on the Tower.

91. Crown's inability to maintain and upgrade the telephone service to the Property has prevented it from adequately meeting the legitimate and crucial service, performance and capacity needs of the Subtenants, which has caused Crown damage to the business relationship with its existing Subtenants and loss of revenue that could be generated from the installation of additional communication equipment by the Subtenants.

92. As a result of the McKays' intentional interference with Crown's relations with its Subtenants, Crown has been unable to provide its Subtenants with upgraded landline telephone service to allow operation at the Property in the full manner expressly permitted by the Lease.

93. As a result of the McKay's intentional interference with Crown's relations, Crown has been unable to upgrade the telephone service to the Property and has suffered damages for which the McKays are liable, including but not limited to injury to reputation and good will with its customers.

94. The intentional interference with Crown's relation by the McKays are of such a nature that legal remedies of damages and restitution are not wholly adequate, but rather require in addition the imposition of the equitable remedies specific performance and injunction to require the McKays to perform their duties under the Lease.

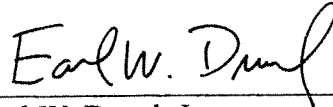
REQUESTS FOR RELIEF

WHEREFORE, Crown respectfully requests that this Court:

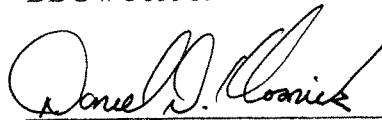
1. Grant Crown declaratory relief in the form of an order that:
 - a. Now and in the future, Crown has the right under the Lease to install and maintain underground utility wires, cables, conduits and pipes, including the proposed fiber optic line, under the Right-of-Way Easement to the Facility;
 - b. Now and in the future, Crown has the right under the Lease to make improvements, including the installation of accessory equipment, on the Property at its cost, option and discretion;
2. Grant Crown specific performance under the Lease by entering a permanent injunction in a form that:
 - a. Now and in the future, enjoins the McKays from interfering with Crown's right, as tenant under the Lease, to utilize the Easement under the Right-of-Way for the purpose of installing and maintaining underground wires, cables, conduits and pipes, including the proposed underground fiber optic telephone line;
 - b. Now and in the future, enjoins the McKays from interfering with Crown's right under the Lease to make improvements, including the installation of accessory equipment, on the Property at its cost, option and discretion;
 - c. Orders and directs that the McKays immediately execute the necessary easement document with the landline telephone company to facilitate the installation and maintenance of the proposed fiber optic telephone lines under or along the Right-of-Way in the name of and for the benefit of Verizon Communications and/or other applicable utility.
3. Enter judgment for Crown on all Counts of its Complaint;

4. Award Crown damages as determined at trial, plus interests and costs as provided by law;
and
5. Grant Crown such other relief as the Court deems just and proper.

Respectfully Submitted,
Crown Castle Atlantic LLC
by its Attorneys,



Earl W. Duval, Jr.
BBO # 565909



Daniel D. Klasnick
BBO # 629142

Duval, Bellone, Cranford & Celli, P.C.
Boott Cotton Mills
100 Foot of John Street
Lowell, MA 01852
(978) 569-1111

Dated: June 13, 2003